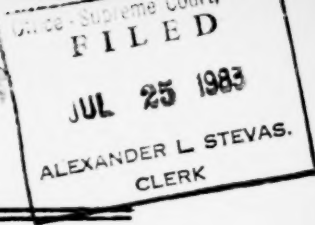


No. _____



In The
SUPREME COURT OF THE UNITED STATES
October Term, 1983

HENRY MALACHOWSKI,
Petitioner,
-against-

SILVERBERG, MARVIN & SWAIM, P.C.
and JAMES A. RANDEL, Esq.
BERKOWITZ & BALBIRER, P.C.
JUDGE ROBERT L. LEVISTER, P.J.
JUDGE T. CLARK HULL
JUDGE HUGH C. CURRAN
JUDGE SIDNEY S. LANDAU
JUDGE NICHOLAS A. CIOFFI
JUDGE MARGARET C. DRISCOLL
JUDGE STANLEY NOVACK
SILVER, GOLUB & SANDAK, P.C.
and ERNEST F. TEITELL, Esq.
U.S. MAGISTRATE THOMAS P. SMITH
U.S. DISTRICT JUDGE ELLEN BREE BURNS
U.S. DISTRICT JUDGE T. EMMET CLARIE

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

HENRY MALACHOWSKI-Pro Se
28 Wright Street
Keene, New Hampshire 03431
(603)352-5822

QUESTIONS PRESENTED FOR REVIEW

The issues framed by the pro se petitioner, here and in the United States Court of Appeals for the Second Circuit and the lower federal court are federal questions.

1. Can a final decree of a federal court be defeated, impaired and/or nullified by a subsequent state court action which relitigates the same subject matter?

2. Is petitioner's attorney permitted to intervene by executing in his name, an unapproved federal settlement agreement made part of a federal decree, having inserted therein for his monetary benefit express provisions of "cost for effectuating this settlement agreement" (said attorney's legal fee) without power of attorney, authorization and/or petitioner's presence in federal court and

immediately thereafter demand that amount as his legal fee?

3. Is said attorney permitted to steal the fruit of the property, secret prohibited information of FDA clinical studies, prohibited U.S. government property and U.S. patents, not public knowledge, which were decreed to the petitioner?

4. Can said attorney attach petitioner's real property (his home) and sue petitioner in a state court for a legal fee which is more than said final federal decree mandates, in which said attorney assented to and to which said attorney was paid in full in advance?

5. Can all defendants, by their attorneys, be permitted to ignore petitioner's complaint claims of defendant's interferences of petitioner's final federal decree and the relitigation in

a State court of the same matter?

6. Can a U.S. magistrate decide and rule upon defendant's motion to dismiss for failure to state a claim upon which relief can be granted, make ultimate decisions, call for hearings of same, ignore defendant's interferences of petitioner's federal decree, claims for relief, rule upon said motion and grant dismissal; and can a U.S. District Judge ratify said magistrate's rulings?

7. Can a Federal court, U.S. magistrate and a U.S. District Judge refuse to exercise their duty to uphold the Constitution and the laws of the United States of its federal jurisdiction to enforce, protect and effectuate its own federal decree plenary from a State court relitigating the same matters concluded by the same federal court?

LIST OF PARTIES TO THE PROCEEDING

Henry Malachowski Petitioner-Plaintiff

Silverberg, Marvin & Swaim, P.C.

and James A. Randel, Esq.

Berkowitz & Balbirer, P.C.

Judge Robert L. Levister, P.J.

Judge T. Clark Hull

Judge Hugh C. Curran

Judge Sidney S. Landau

Judge Nicholas A. Cioffi

Judge Margaret C. Driscoll

Judge Stanley Novack

Silver, Golub & Sandak, P.C.

and Ernest F. Teitell, Esq.

U.S. Magistrate Thomas P. Smith

U.S. District Judge Ellen Bree Burns

U.S. District Judge T. Emmet Clarie

Respondents-Defendants

Writ of Mandamus directed to:

At the United States District Court

for the District of Connecticut at

Bridgeport: Docket No. 82-545.

U.S. Magistrate Arthur H. Latimer

U.S. District Judge T. F. Gilroy Daly

Respondents.

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COUNSEL FOR DEFENDANTS

Linda Lager, Esq.
Assistant United States Attorney
District of Connecticut
P.O. Box 1824
New Haven, Connecticut 06508

Paul M. Shapiro, Esq.
Assistant Attorney General
University of Connecticut
Gulley Hall U-177
Storrs, Connecticut 06268

Andrew B. Bowman, Esq.
1804 Post Road East
Westport, Connecticut 06880

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1983

No. _____

HENRY MALACHOWSKI,

Petitioner,

-against-

SILVERBERG, MARVIN & SWAIM, P.C.
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and ERNEST F. TEITELL, Esq.
U.S. MAGISTRATE THOMAS P. SMITH
U.S. DISTRICT JUDGE ELLEN BREE BURNS
U.S. DISTRICT JUDGE T. EMMET CLARIE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Second Circuit entered on 31 March 1983 and 17 June 1983.

DECISION BELOW

The Court of Appeals for the Second Circuit, namely Honorables Amalya L. Kearse, Lawrence W. Pierce and George C. Platt, entered its decision denying the petitioner's Motion for a Writ of Mandamus on 31 March 1983. A copy of such decision is printed as page 1a of the Appendix herein.

On 17 June 1983 the same Court of Appeals denied the petitioner a hearing when request was made for reason for denial. A copy of such decision of denial is printed as 2a of the Appendix herein.

JURISDICTION

On 31 March 1983 the Court of Appeals for the Second Circuit entered a decision of denial of petitioner's Motion for Writ of Mandamus directed to respondents U.S. Magistrate Arthur H. Latimer and U.S. District Judge T. F. Gilroy Daly. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254 (1)(3), Rule 17 (a)(c) of this Court and federal questions; this case comes within the provisions because the decision of the Court of Appeals for the Second Circuit in denial of petitioner's Motion for Writ of Mandamus is in conflict with other Court of Appeals decisions, U.S. Supreme Court decisions and federal laws on the same matters.

STATEMENT OF THE CASE

(a) The Facts

On 16 September 1982, the petitioner filed an action with the United States District Court for the District of Connecticut at Bridgeport: Docket No. B 82-545.

The petitioner's action is for money damages for reasons that the law firm of Silverberg, Marvin & Swaim, P.C. and James A. Randel, employee, were retained to institute suit against Robert Daniels/Generics Corp. for the revocation of the petitioner's license agreement.

The results of that action were the federal court at Bridgeport, Connecticut re Docket No. 76-222 on February 15, 1977 rendered a decree returning all property and patent rights to the petitioner, Henry Malachowski.

The petitioner discovered that said law firm stole the fruits of the decree which is secret information under license with the FDA, U.S. patent secret information not public knowledge, and also stole U.S. government materials which was not, and is not, public knowledge which prevents the petitioner from making a profit from the decreed property.

Although said law firm was fully paid in advance, the law firm sued the petitioner in a Connecticut Superior Court at Stamford (Silverberg, Marvin & Swaim, P.C. v Henry Malachowski, Docket No. CV-003179 S, filed April 26, 1977), based upon the same cause as expressly provided in petitioner's federal decree as "cost" (legal fee) in re Robert Daniels/Generics Corp. Said law firm attached the petitioner's home in Con-

necticut 1/ for a legal fee for more than said law firm assented to as "cost" upon the February 15, 1977 final federal decree to which said law firm intervened by executing an unauthorized, unapproved official federal decree in their name without power of attorney to defraud the petitioner and Generics Corp.

In Connecticut Superior Court said law firm waived their initial complaint claim, and without leave of court or amendment sought a lesser and differing legal fee in re Robert Daniels/Generics Corp. for reasons that said law firm admitted to the court that they could not

1/ Section 1 of the 14th Amendment to the Constitution of the United States, in part, provides:

"...nor shall any State deprive any person of life, liberty, or property, without due process of law;..."

prove or substantiate their initial complaint claim.

The State court ignored the petitioner's pleas of clear absence of jurisdiction over the subject matter and a plea of res judicata, refused to comply with State law to dismiss the action when the law firm failed to sustain their initial claim in pre-judgment attachment proceedings.

(b) The Proceedings Below

The Appeals Court denial of petitioner's Motion for Writ of Mandamus was without a hearing, without reasons or grounds, and is in conflict with other Appeals Court decisions, U.S. Supreme Court decisions and federal laws in that magistrates have no power to decide, make ultimate decisions, rule or grant dismissal in re defendants' Motions to

Dismiss for failure to state a claim upon which relief can be granted; nor does the district court (U.S. District Court Judge T. F. Gilroy Daly) have the power to delegate such power and duties to magistrates.

In the district court, said respondents, U.S. Magistrate Latimer and U.S. District Court Judge Daly ignored and permitted all defendants, by their attorneys, to ignore defendants' interferences of petitioner's final federal decree and all other claims for relief. Did, without justification, deprive the petitioner of his Constitutional and federal rights to protect, enforce and vindicate those rights which were granted him by said final federal decree in the same federal court wherein the claim arose.

REASONS FOR GRANTING THE WRIT

The petitioner's grounds for such Writ of Mandamus is under 28 USCS: 1651 to the Court of Appeals is that there is abuse of discretion, clear usurpation of judicial power in the violations of Constitutional and federal laws, federal and U.S. Supreme Court decisions; and in departing from their duties, said respondents ignored petitioner's federal decree claim for relief, made ultimate decisions contrary to the issues before the court, cited irrelevant, meritless court decisions, decided upon and granted defendant's motion to dismiss for failure to state a claim upon which relief can be granted.

The petitioner questions this magistrate's power which conflicts with other Appeals Court decisions and federal law in deciding and ruling upon Mo-

tion to Dismiss.

Petitioner cites: TPO, Incorporated
v Hon. Thomas R. McMillen, 460 F.2d 348
(7th Cir. 1972)

"The Court of Appeals, Sprecher, Circuit Judge, held that under the Magistrates Act, magistrates have no power to decide motion to dismiss or motions for summary judgment, both of which involve ultimate decision making, and the district courts have no power to delegate such duties to magistrates." Citing, La Buy v Howes Leather Co., 352 U.S. 249 (1957)

See: 28 USCS: 636 (b)(1)(A)(3),
1982- Jurisdiction, powers and temporary assignments.

(b)(1) Notwithstanding any provisions of the law to the contrary-

(A) A judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief...to dismiss for failure to state a claim upon which relief can be granted...

(3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

Petitioner cites: Escalera v New York Housing Authority, 425 F 2d 853 (2d Cir. 1970).

"A law suit cannot be dismissed for failure to state a claim in which relief can be granted unless a court can say with certainty that a plaintiff could not prove a set of facts entitled it to relief."

Also see Conley v Gibson, 352 U.S. 41 (1957).

Said respondents, in refusing to do their duty, did permit the petitioner's complaint claims of federal questions in re defendant's interferences of petitioner's final federal decree to be ignored by all defendants, did also ignore and refuse to act upon same, did renounce the Constitution and laws of the United States of its federal jurisdiction and the duty of the federal court to uphold, protect and effectuate its own decrees plenary, refused to issue an

injunction, did permit the relitigation to continue in a State court of the same matters concluded by the same federal court.

See Brun et al v Mann, 151 F 145 (8th Cir. 1906), which states:

"Jurisdiction to enforce their judgments and decrees plenary.

The jurisdiction is conferred by the Constitution and the laws of the United States, and the duty, which they may not renounce, is imposed upon the national court to enforce their judgments and decrees and to decide by their own independent judgment every controversy which conditions their complete execution.

This power may not be lawfully destroyed, limited, or diminished by the legislation of the states or the decisions of their courts."

The petitioner refers to federal law governing relitigation of federal decrees, under 28 USCS: 2283 and 28 USCS: 1651, where necessary in aid of its jurisdiction and decrees, see:

28 USCS: 2283 - Stay of State Court
proceedings.

"A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

See Brun et al v Mann, supra; Swift v Black Panther Oil & Gas Co., 244 Fed 20 (8th Cir. 1917) and cases cited therein; Toucey v New York Life Insurance Co., 314 U.S. 118 (1941) and cases cited therein.

The federal record shows that, without leave of court, the petitioner's attorney became a party by intervening upon the petitioner's federal decree which binds said attorney to that which he assented to as his legal fee, then sought a legal fee for more than he assented to and to which he was fully paid in advance.

See 5 USCS: 500 which governs written authorization from the petitioner for an attorney to execute such official federal documents in his name; said attorney did not have same.

Petitioner states federal laws govern and provide by writ of error or appeal in re Modification of final judgments/decrees. Costs and fees, allowance of counsel fees and expenses of litigation.

Petitioner cites U.S. Supreme Court cases: Kansas City Southern Railway Company v Guardian Trust Company, 281 U.S. 1 (1930); Sprague v Ticonic National Bank, 307 U.S. 161 (1939); Johnson Co. v Wharton, 152 U.S. 252 (1894); Pacific Railroad Co. of Missouri v Ketchum, 101 U.S. 289 (1880); Mason v Pewabie Mining Co., 153 U.S. 361 (1894); Vaughan v Atkinson, annotations 8 Led 2d 88, Right

to counsel fees in federal court.

See Deposit Bank v Board of Councilmen of Frankfort, 191 U.S. 499 (1903)

"As between National and State Court, neither will undertake to grant relief from a judgment rendered by the other. One having equitable grounds for relief from a judgment in courts of either must apply to the court of the sovereignty in which the judgment was rendered."

In controvention of 28 USCS: 455
(a)(b)(1), said respondents refused to disqualify themselves for their questionable impartiality, personal bias and prejudices in refusal to uphold other Federal Appeals court and U.S. Supreme Court decisions and federal laws. In further obstruction of justice, this magistrate continued to rule unlawfully in controvention of federal statutes and decisions and upon additional motions to dismiss, injunctive relief and non-existent motion to dismiss, thereby inter-

fering, preventing and hindering the petitioner from enforcing and vindicating his Constitutional and federal rights secured by said final federal decree in the same federal court wherein the claim arose.

The record clearly shows that the defendant (petitioner's attorney) used the Federal court as a means to rob the fruits of the petitioner's and Generics Corp. property of secret U.S. patents information, original secret clinical testing studies of the master files under license with the FDA and not public knowledge, and prohibited U.S. government property for said defendant's own monetary benefit.

Penalty is provided by 18 USCS: 371 and 641; see current United States v Hitachi Ltd. & Mitsubishi, (theft of secret information), and under 18 USCS:

241 conspiracy, United States v Lancaster, (1891 CC Ga) 44 F 896.

The petitioner states that the record clearly shows that said respondents permitted all defendants, in sequential order, to ignore petitioner's federal questions claims for relief and that said respondents played a significant role in the culmination of the deprivation of petitioner's absolute rights to vindicate those Constitutional and federal rights secured by said federal decree in the same federal court wherein the claims arose.

See Brun et al v Mann, supra; Swift v Black Panther Oil & Gas Co., supra; Kletschka v Driver, 411 F 2d 436 (2d Cir. 1969); American Civil Liberties Union v City of Chicago, 431 F Supp 25 (1976); United States v Lancaster, supra.

CONCLUSION

For the foregoing reasons the petitioner, Henry Malachowski, respectfully requests that a Writ of Certiorari issue to review the decisions of the United States Court of Appeals for the Second Circuit.

The petitioner seeks of this Court vindication of his federal rights denied by the Appeals Court and Federal court.

(a) Reversal of U.S. Magistrate Arthur H. Latimer's unlawful rulings and ratification thereof by U.S. District Judge T. F. Gilroy Daly in re defendants' Motion to dismiss for failure to state a claim upon which relief can be granted and petitioner's Motion for Order in re injunctive relief and contempt of federal court's judgment.

(b) Disqualification of both respondents U.S. Magistrate Latimer and

U.S. District Judge Daly for their refusal to uphold federal court's jurisdiction over the petitioner's federal decree plenary, and for their questionable impartiality, bias and prejudice, and for the above stated reasons.

(c) A permanent injunction against the state court proceedings which relitigates matters concluded by federal court.

(d) This Court's discretion to hold contempt proceedings against all named defendants and their attorneys who colluded in the criminal interferences of petitioner's federal decree by ignoring the theft of the fruits of the decree and the theft of U.S. government property, all of which deprived the petitioner of his Constitutional and federal rights to protect, enforce and defend property rights granted by federal court and to

seek a livelihood from said decreed property.

(e) Money damages which this Court may deem proper and just.

July 22, 1983

Respectfully submitted,

HENRY MALACHOWSKI - Pro Se
28 Wright Street
Keene, New Hampshire 03431
(603)352-5822

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PRO SE

M/29
83-3009

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 31st day of March, one thousand nine hundred and 83.

In Re: Henry Malachowski,

Petitioner.

A motion having been made herein by
Petitioner pro se for Writ of Mandamus

Upon consideration thereof, it is
Ordered that said motion be and it
hereby is DENIED.

Amalya L. Kearse
Lawrence W. Pierce
George C. Platt
Circuit Judges

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the seventeenth day of June, one thousand nine hundred and eighty-three.

- - - - -X

IN RE:

HENRY J. MALACHOWSKI, No. 83-3009
Petitioner.

- - - - -X

A petition for a rehearing having been filed herein by petitioner, Henry J. Malachowski, pro se,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

A. Daniel Fusaro, Clerk
by

Francis X. Gindhart,
Chief Deputy Clerk